IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 3085 of 2006()

AGAINST THE ORDER DATED 31/08/2006 IN CRMP. 3938 /2006 IN CRA.616/2006 of SESSIONS COURT, ERNAKULAM

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PETITIONER: ACCUSED NO.2 IN CC 1026/2005.

SHANMUGHAN, VITHINATHARA VEEDU,
PANAMBUKAD, MULAVUKAD.

BY ADV. SRI.C.T.RAVIKUMAR

RESPONDENTS: COMPLAINANT.

THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3085 of 2006

Dated this the 8th day of December 2006

O R D E R

The petitioner was the seventh accused in a prosecution interalia for the offences punishable under Sections 406 and 477(A). He was found guilty, convicted and sentenced to undergo S.I for a period of one month. There was a further direction that all the accused together must pay an amount of Rs.1,10,000/-. Altogether in the case, there were ten accused. Some of them are no more, some of them are acquitted. The petitioner filed an appeal against the verdict of guilty, conviction and sentence. The appeal was hopelessly belated. There was a delay of 313 days. The petitioner prayed that the delay may be condoned. The learned Sessions Judge considered the prayer for condonation of delay and held that since there is huge delay, the delay can be condoned only on condition that the petitioner deposits ¼ of the compensation amount within a period of one month. Before the period expired, the petitioner has come to this court with this Crl.M.C.

2. The learned counsel for the petitioner submits that the delay occurred for no fault of the accused. An affidavit has been filed explaining the reason for the delay. The counsel himself has filed the

affidavit owning the entire responsibility for the delay in filing the appeal. The counsel in the affidavit submits that on account of some personal tragedy, he could not give the required attention to the work that he was expected to attend to.

3. The question is not whether the conduct of the counsel is justified or not. The counsel having owned the responsibility. I am persuaded to feel that in a case like this, where a petitioner faces a substantive sentence, lenient view can be taken and delay can be condoned without insisting on any other conditions. Of course, the learned Sessions Judge shall be at liberty to impose appropriate conditions when the sentence is sought to be suspended.

4. In the result, this Criminal Miscellaneous Case is allowed. The condition imposed in the impugned order is set aside. The delay shall stand condoned without any condition. The learned Sessions Judge shall call the appeal along with the connected appeals, which are also said to be pending.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006